

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1501/2019 with MA 2428/2019

Ex Sgt Pradeep Kumar Sharma

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Anil Kumar Gupta, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

MA 2428/2019

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 3310 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 2428/2019 is allowed and the delay of 3310 days in filing the OA 1501/2019 is thus condoned. The MA is disposed of accordingly.

OA 1501/2019

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) ***Quash and set aside the impugned letters dated 13.3.2019***
- (b) ***Direct respondents to grant disability pension @ 30% and also rounding off from @ 30% to @ 50% for life to the applicant with effect from 30 Jun 2009 i.e. the date of discharged from service with interest @ 12% p.a. till final payment is made.***
- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

2. The applicant was enrolled in Indian Air Force on 09.06.1989 and discharged from service on 30.06.2009 under the clause on "On fulfilling the conditions of enrolment" after rendering total 20 years and 22 days of regular service The applicant was found fit to be released in low medical category A4G2(P), for the disability of "Primary Hypertension (Old) assessed @ 30%. The applicant was subjected to a Release Medical Board (RMB) on 17.10.2008 whereby the percentage of composite disability was assessed @ 30%, however, net

qualifying percentage for disability was nil for life as the disability was adjudged as neither attributable nor aggravated to military service

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med Cat(D) dated 24.12.2008. The outcome was communicated to the applicant vide letter No. RO/2703/729613/06/09/P&W(DP /RMB) dated 29.12.2008 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The applicant had preferred his first appeal on 10.01.2019 which was not considered by the respondents in terms of MoD letter no 1(3)/2008/D(Pen/Pol.) dated 17.05.2016 being a time barred case and this fact was intimated to the applicant vide letter no Air HQ Letter No. Air HQ/99798/5/TBS/729613/Appeal/AV-III dated 15.03.2019. Thereafter, the applicant sent a legal notice dated 31.05.2019 seeking grant of disability element of pension and, according

to the respondents, the same was replied to vide letter no. Air/HQ/99798 1/729613/DAV/DP/CC dated 25.06.2019, Aggrieved by the same, the applicant has filed the present OA. In the interest of justice thus, in terms of Section 21(2) of the AFT Act 2007, it is considered appropriate to take up the present OA for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that the applicant is a "CLK/EA" by trade and his put in 20 years and 22 days of long service in the Indian Air Force.
6. The learned counsel for the applicant submitted that on successful completion of his training without any medical problem, the applicant was posted to various Air Force units in varied climatic and geographical conditions.
7. The learned counsel for the applicant submitted that in addition to conditions of service, dietary compulsions of military life including frequent changes in weather and social environment at different geographical locations were the main causes of stress and strain on the applicant.

8. The learned counsel for the applicant submitted that the instant case is squarely covered by the judgements of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, **Deokinandan Prasad Vs State of Bihar** AIR 1971 SC page 1409, CA No 2904 of 2011 in case of **Union of India & Ors. Vs Rajbir Singh** dated 13 February, 2015.

9. Reliance was also placed as was held by the Tribunal in TA no. 48 of 2009 in WP(C) No. 6324/2007 in case of **Nakhat Bharti Vs UOI & Ors.**, TA No 208 of 2010 (WP (C) No. 9764/2009), in case of **Krishna Singh Vs Union of India**, OA No. 90 of 2014 in case of **Ex AC (U/T) Naresh Kumar Rana Vs UOI & Ors** dated 25.09.2014, wherein similarly situated personnel were given relief.

10. Per contra the learned counsel for the respondents submits that the Primary Hypertension disability is basically a lifestyle related disorder and in the case of the applicant it had its onset in peace station. The learned counsel further submitted that prior to onset of the disability, the applicant

has served only in peace stations since 1989 and the onset of the disability occurred in February 2006 and there has been no close time association of military service with onset and progression of the disability and hence, the disability is NANA as per para 43 of GMO (Military Pension) 2008.

11. The learned counsel for the respondents also submitted that the applicant was overweight and was advised to reduce his weight. The learned counsel for the respondent submitted the weight chart of the applicant which reads as under:-

Date	Type of Med Exam	Actual Weight in KG	IBW (In KG)	Over Wt %	BMI	WHR	Advice
04 Jan 89	Primary	53	-	-	-	-	-
17 Mar 05	Annual	68	60.5	12.39	24.97	0.89	-
12 Apr 06	Initial Med Board	74.5	59	26.2	28.04	0.97	To reduce weight @ 1-1.5kg/month with diet and exercise
06 Mar 07	Recat	73	59	23.7	27.4	0.94	
04 Mar 03	Recat	74	59.5	24.3	27.5	0.94	
17 Oct 08	Release	74	59	24.3	27.5	0.94	

12. The learned counsel for the respondents submit that the disability of Hypertension of the applicant is directly related to his overweight condition.

13. The learned counsel for the respondents placed reliance on the orders passed by Armed Forces Tribunal, Principal Bench at New Delhi in case of **Col (Mrs.) Dropadi Tripathi (Retd.) Vs Union of India & Ors**, in OA 1843 of 2018, decided on 13.04.2023, wherein the claim of disability pension for Primary Hypertension was disallowed because the applicant therein was found to be overweight.

ANALYSIS

14. It is a fact that the applicant vide RMB dated 17.10.2008 has been assessed with the disability of Primary Hypertension @ 30% which has been attributed as NANA by the RMB.

15. The applicant prior to the onset of the disability in 2005 was overweight by 12.39% and was overweight by 26.2% in 2006 when the onset of the disability occurred. The applicant was overweight even at the time of the RMB as the actual weight of the applicant has been indicated as 74 kg against an

ideal weight of 59 kg. Thus, the applicant has been constantly overweight for a long period which indicates that the applicant failed to maintain the ideal weight which can be managed by regular exercise and restricted diet.

16. The publication released by World Health Organization titled "Hypertension" assessed through internet on 16.03.2023 was examined by us and which reads to the effect:-

"Hypertension (high blood pressure) is when the pressure in your blood vessels is too high (140/90 mmHg or higher). It is common but can be serious if not treated.

People with high blood pressure may not feel symptoms. The only way to know is to get your blood pressure checked.

Things that increase the risk of having high blood pressure include:

- ***older age***
- ***genetics***
- ***being overweight or obese***
- ***not being physically active***
- ***high-salt diet***
- ***drinking too much alcohol***

Risk factors

- ***Modifiable risk factors include unhealthy diets (excessive salt consumption, a diet high in saturated fat and trans fats, low intake of fruits and vegetables), physical inactivity,***

consumption of tobacco and alcohol, and being overweight or obese.”

This bulletin of WHO specifically brings out the effect of overweight/obesity on hypertension.

17. Additionally, this Tribunal, while dealing with disability pension for disabilities ‘Obesity and Hypertension’ in O.A No 1656/2019, titled ***Ex HFO Gyanendra Singh vs Union of India & Ors***, has dismissed the case on merit which was also upheld by the Hon’ble Supreme Court in Civil Appeal Diary No. 21017/2019 decided on 08.07.2019.

18. Furthermore, this Tribunal, while dealing with disability pension for disability of “Primary Hypertension”, in case of ***WO Satpal Singh (Retd. vs Union of India & Ors.*** , in OA no. 2097/2021 dated 06.12.2023, wherein the claim of disability pension for the disability of Primary Hypertension was disallowed because the applicant therein was found to be overweight.

CONCLUSION

19. In view of the aforesaid contentions and the parameters referred to above, and the fact that the applicant was

overweight prior to the onset of the hypertension and the correlation of Primary Hypertension and overweight we are of the view that weight of the applicant is a contributory factor toward the onset of the primary hypertension and the applicant is not entitled to the grant of disability element of pension. We are not inclined to grant any relief to the applicant and the original application stands dismissed.

20. There is no order as to costs.

Pronounced in the open Court on this day of ^{ed} 22 October 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Pooja